



United States Department of the Interior

BUREAU OF LAND MANAGEMENT WARM SPRINGS RESOURCE AREA

15 East 500 North
Fillmore, Utah 84631



IN REPLY REFER TO:

3800
UT055

August 16, 1990

Scott L. Lees
5302 South 900 East, Number 2
Murray, Utah 84117

Dear Mr. Lees:

millard
8/27/90
Your notice to conduct mining related operations on your claims, Kassidy Numbers 1 and 2, UMC 330095 and 330095 located in T. 17 S., R. 13 W., Section 14, has been received and accepted by this office. Your notice has been assigned case file number UT-055-90-14N. Please use this number in any future correspondence concerning this notice.

If you change your operation from what is described in your notice, please contact this office prior to the change. If your operations extend for more than one year, please advise this office of the status of your mining related activity on the anniversary date of your notice.

A copy of your notice has been sent to the Utah Division of Oil, Gas and Mining (DOGM); therefore, you will not have to file this notice with DOGM. However, reclamation under this notice is required to conform to the standards of the Utah Mined Land Reclamation Act. Also, all mining claimants and operators that plan to use, store, or divert water are required by Utah statute to notify the Utah Department of Water Resources at:

1636 West North Temple
Salt Lake City, Utah 84180-1203

As required by 43 CFR 3809, Surface Management Regulations, reasonable measures must be taken to prevent unnecessary or undue degradation of public lands during your operations. Please notify this office upon completion of operations and reclamation, so an inspection may be conducted on the site.

It is our preliminary opinion that the stone which it is your intent to mine is a common variety material and as such is not subject to location under the general mining laws, but is only available for disposal through sale. A deposit of ornamental stone would be locatable if it were an uncommon variety. In *McClarty v. Secretary of the Interior*, 408 F.2d 907, 908 (9th Cir. 1969), the Court set standards to distinguish between common varieties and uncommon varieties:

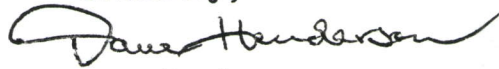
1. There must be a comparison of the mineral deposit in question with other deposits of such minerals generally;
2. The mineral deposit in question must have a unique property;
3. The unique property must give the deposit a distinct and special value;
4. If the special value is for uses to which ordinary varieties of the mineral are put, the deposit must have some distinct and special value for such use; and
5. The distinct and special value must be reflected in the market place (or in reduced cost or overhead so that the profit to the claimant would be substantially more).

Should a final determination by the Department of Interior be made that this material is, in fact, "common variety", you could be responsible to the United States for the value of this material, damage to the land, and the administrative costs of recovering such compensation.

Acceptance of your notice will not now, nor in the future, serve as a determination of the validity nor ownership of any mining claim included under your notice.

Thank you for submitting your notice. If you have any questions regarding this letter, please contact Phil Allard at (801) 743-6811.

Sincerely,



Dave Henderson
Area Manager

cc: D. Wayne Hedberg, UDOGM
Jerry Reagan, Millard County Planning and Zoning